

**AGGRAVATED UNLICENSED OPERATION  
OF A MOTOR VEHICLE IN THE SECOND DEGREE  
(Based on Refused Chemical Test or DWI)  
VEHICLE AND TRAFFIC LAW 511 (2) (a) (ii)  
(Committed on or after Oct. 14, 1989)  
(Revised Jan. 2008<sup>1</sup> and Aug. 2008<sup>2</sup>)**

The (*specify*) count is Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree.

Under our law a person is guilty of Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree when such person operates a motor vehicle upon a public highway while knowing or having reason to know that his or her license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner<sup>3</sup>

[and the suspension or revocation was based upon

*Select appropriate alternative(s):*

a refusal to submit to a chemical test;<sup>4</sup>

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<sup>1</sup> The purpose of the revision was to provide a clearer definition of “operates” by removing the language “for the purpose of placing it in operation” and replacing such language with “for the purpose of placing the vehicle in motion.” See *People v Alamo*, 34 NY2d 453, 458 (1974); *People v Marriott*, 37 AD2d 868 (3d Dept 1971); *People v O'Connor*, 159 Misc2d 1072, 1074-1075 (Dist Ct, Suffolk, 1994). See also *People v Prescott*, 95 NY2d 655, 662 (2001).

<sup>2</sup> The purpose of the revision was to provide an appropriate instruction for instances when the defendant admits to the reason for the suspension. If the defendant has so admitted, the bracketed section is omitted. (See footnote number 5).

<sup>3</sup> “Commissioner” is defined as “the commissioner of motor vehicles of this state” (Vehicle and Traffic Law § 108).

<sup>4</sup> The statutory language here reads: “chemical test pursuant to section eleven hundred ninety-four of this chapter.” If it is in issue as to whether the test was requested pursuant to that provision, the Court will

a finding of driving after having consumed alcohol in violation of section eleven hundred ninety-two-a of the Vehicle and Traffic Law; or

a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the Vehicle and Traffic Law.] <sup>5</sup>

The following terms used in that definition have a special meaning in the law.

MOTOR VEHICLE means every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power. <sup>6</sup>

To OPERATE a motor vehicle means to drive it.

[NOTE: Add the following if there is an issue as to operation:

A person also OPERATES a motor vehicle when such person is sitting behind the wheel of a motor vehicle for the purpose of placing the vehicle in motion, and when either the motor vehicle is moving, or even if it is not moving, the

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need to fashion an appropriate charge.

<sup>5</sup> If the defendant has admitted to the reason for the suspension set forth in the special information pursuant to CPL 200.60, this element would not be presented to the jury for its consideration. See *People v Cooper*, 78 NY2d 476 (1991); *People v Flanagan*, 247 AD2d 899 (4th Dept 1998); *People v Boyles*, 210 AD2d 732 (3d Dept. 1994); *People v Sawyer*, 188 AD2d 939 (3d Dept 1992); *People v Miller*, 142 AD2d 760 (3d Dept 1988).

<sup>6</sup> The term “motor vehicle” is defined in Vehicle and Traffic § 125. That definition contains exceptions which are not set forth in the text of this charge. The term “public highway” appearing the definition of “motor vehicle” is itself separately defined in Vehicle and Traffic Law § 134 and the terms within that definition are also separately defined in article 1 of the Vehicle and Traffic Law. If an exception or definition is in issue, then the charge should be amplified accordingly.

engine is running.<sup>7</sup> ]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case beyond a reasonable doubt, (both/each) of the following (two/three) elements:

1. That on or about (*date*), in the county of (*County*), the defendant (*defendant's name*) operated a motor vehicle on a public highway; and
2. That the defendant did so while knowing or having reason to know that his/her license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner [; and]
- [3. That the suspension or revocation had been based upon

*select appropriate alternative(s):*

a refusal to submit to a chemical test

a finding of driving after having consumed alcohol in violation of section eleven hundred ninety-two-a of the Vehicle and Traffic Law

a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the Vehicle and Traffic Law.]<sup>8</sup>

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<sup>7</sup> See cases in footnote one, which define the term “operate” a motor vehicle in the statutes defining “operating a motor vehicle while under the influence of alcohol or drugs” (Vehicle and Traffic Law § 1192).

<sup>8</sup> See footnote five.

If you find that the People have proven beyond a reasonable doubt (both/each) of those elements, you must find the defendant guilty.

If you find that the People have not proven beyond a reasonable doubt (either one or both/any one or more) of those elements, you must find the defendant not guilty.